

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18180 of 2014

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Brinda Prasad Roy Son of Late Sukhai Roy Resident of Quarter No. T/32, Postal Colony, Barmasia, P.S. - Katihar Town, District - Katihar

.... Petitioner/s

Versus

1. The Union of India through the Secretary, Postal Service Board, Dak Bhawan, New Delhi - 110001
2. The Secretary, Postal Service Board, Dak Bhawan, New Delhi - 110001
3. The Chief Post-Master General, Department of Post, Bihar Circle, Patna, Bihar
4. The Post Master General (Northern), Department of Post, Muzaffarpur, Purnea
5. The Superintendent of Post Office, Department of Post, Purnea Division, Purnea
6. The Post Master, Head Office, Department of Post, Purnea Division, Purnea
7. Sri Bharat Bhushan, Son of not known, S.P.M. S.O. Bara Bazar, Katihar, at present P.A. BMP Camp, Katihar

.... Respondent/s

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Appearance :

For the Petitioner/s :

For the Respondent/s :

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH)

Date: 10-05-2016

Heard learned counsel for the parties.

The challenge in the present writ application is to the order dated 16th April, 2014 passed by the Central Administrative Tribunal, Patna Bench, Patna (hereinafter referred to as the ‘Tribunal’) by which O.A. No. 42 of 2012 filed by the petitioner has

been dismissed.

The petitioner has assailed the order dated 22.09.2011 issued by the Superintendent of Post Offices, Purnea Division, by which the period from 26.07.2009 to 11.08.2011 has been treated as '*dies non*' on account of unauthorized absence and holding him not entitled to payment of salary and allowances for the said period.

The petitioner joined service under the Department of Posts on 12.01.1984 on the post of Postal Assistant at Head Office, Katihar. In the year 2006, he was posted at Durgapur Post Office, Katihar as Sub Postmaster and consequent upon closure of the said Post Office and transfer of its work to Katihar Bara Bazar SPO, he was attached to Katihar H.O. by order dated 25.03.2009 of the Superintendent of Post Offices, Purnea Division. The petitioner represented for being posted at Katihar Bara Bazar, S.O. and the petitioner was directed to be retained at Katihar Bara Bazar, S.O. He was relieved on 25.07.2009 from Katihar H.O. and claims to have given his joining on 27.07.2009 at Katihar Bara Bazar, S.O. but, as alleged by him, the incumbent refused to hand over charge and the said fact, according to him, was communicated to the authorities. Thereafter, on the intimation of the Superintendent of Posts, Purnea Division dated 31.07.2009, the petitioner was communicated that the earlier order dated 17.07.2009 directing for the petitioner to be



retained at Katihar Bara Bazar, S.O. was being kept in abeyance until further orders. The petitioner was asked to submit an explanation by letter dated 07.10.2009 with regard to complaint against him relating to the period he worked as S.P.M., Durgapur S.O. He thereafter moved before the Tribunal in O.A. No. 634 of 2009 praying for direction to the authorities to retain him on the post of S.P.M., Bara Bazar S.O., Katihar and pay arrear of salary with effect from 26.07.2009 and also for quashing of the orders dated 01.08.2009 and 07.10.2009. The same was disposed off on 13.08.2010 directing the authorities to allow the petitioner to work at Katihar Bara Bazar in pursuance of order dated 06.05.2009 but leaving it to the competent authority to pass a specific order re-transferring him from Katihar Bara Bazar to Katihar H.O. or any other Post Office, as per Rule, if it was not feasible/desirable to keep him at Katihar Bara Bazar and with regard to non-payment of his salary from 26.07.2009 onwards, he was directed to file a representation before the competent authority which was to be disposed off within two months by a speaking order. The petitioner filed a representation in light of the said order on 31.08.2008 and when the same was not disposed he filed C.C.P.A. No. 97 of 2010 before the Tribunal, but in the meantime the Postmaster General (Northern), Department of Posts, Muzaffarpur passed a speaking order on 14.02.2011 and thus C.C.P.A. No. 97 of



2010 was disposed off by order dated 29.09.2011. Regarding payment of salary, as per the order dated 13.08.2010 in O.A. No. 634 of 2009, a separate order was passed on 22.09.2011 by the Superintendent of Posts, Purnea Division, Purnea by which the period 26.07.2009 to 11.08.2011 was treated as '*dies non*' on account of the petitioner remaining on unauthorized absence and holding him not entitled to any pay and allowances for the said period. The said order was under challenge before the Tribunal in O.A. No. 42 of 2012.

Learned counsel for the petitioner submitted that due to the harassing attitude of the respondents, he was transferred to Katihar H.O. and on his representation he was retained at Bara Bazar S.O. but the order was kept in abeyance without any justification and that the Tribunal had thus interfered in the matter directing the respondents to allow the petitioner to work at Katihar, Bara Bazar in pursuance of order dated 06.05.2009 and therefore, the order dated 14.02.2011 to again post the petitioner at Katihar H.O. was vindictive. He submitted that the second direction of the Tribunal in O.A. No. 634 of 2009 regarding consideration of his claim for salary has also wrongly been denied by order dated 22.09.2011.

Learned counsel for the respondents submitted that right from the beginning the petitioner has tried to avoid the order of his superiors and also the transfer order. He submitted that the



petitioner, on false representation, initially managed an order to be posted at Katihar Bara Bazar, S.O. on the plea that there was vacancy, but when the authorities were informed of the misrepresentation, the said order was kept in abeyance and after that the petitioner should have joined at Katihar, H.O., which he did not. Further, even after order passed subsequent to the direction of the Tribunal in O.A. No. 634 of 2009, posting him at Katihar H.O. under order dated 14.02.2011, the petitioner joined only on 12.08.2011 and, thus, he remained on unauthorized leave and the authorities denying him the salary for the said period, cannot be faulted.

Having considered the rival contentions, we do not find any merit in the submissions of learned counsel for the petitioner. Once the order transferring the petitioner to Katihar Bara Bazar S.O. was kept in abeyance, the obvious import was that the *status quo ante* stands restored and the petitioner was thus required to report at Katihar H.O., which he admittedly did not. Even pursuant to the order of the Tribunal in O.A. No. 634 of 2009, he did not give his joining anywhere but rather sent a representation through post which has been disposed off by order dated 14.02.2011 directing him to be posted at Katihar, H.O. which he also did not comply and only subsequently on 13.08.2011 he joined and, thus, the authorities have rightly denied him the salary for the period 26.07.2009 to 11.08.2011

as ‘*dies non*’. From the aforesaid it is obvious that the petitioner, without any valid justification or order in his favour, has not joined at the place he was required to, and moving before the Tribunal or representing before the authorities cannot be a justification for condoning such act and treating the period as on work, for which he may be entitled to payment of salary.

Accordingly, we do not find that the order of the Tribunal upholding the decision of authorities needs any interference and the writ petition stands dismissed.

(Ahsanuddin Amanullah, J)

Hemant Gupta, J *I agree.*

(Hemant Gupta, J)

Anjani/-
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